PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO. 220-221, SECTOR 34-A, CHANDIGARH

Review Petition No.03 of 2018
in Petition No.65 of 2017
Date of order: 11.10.2018

PRESENT: Ms. Kusumjit Sidhu, Chairperson
Sh. S.S. Sarna, Member
Ms. Anjuli Chandra, Member

In the matter of: Review Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Order 47 Rule of the Code of Civil Procedure, 1908 and Regulation 64 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 for seeking review of the Tariff Order dated 19.04.2018 passed by the Commission in Petition 65 of 2017 for FY 2018-19.

And

In the matter of: Punjab State Transmission Corporation Limited, PSEB Head Office, The Mall, Patiala, Punjab-147001.

…Review Petitioner

Versus

Punjab State Power Corporation Limited, through Chief Engineer (ARR&TR), The Mall, Patiala, Punjab-147001.

…Respondent

ORDER

The Review Petitioner, Punjab State Transmission Corporation Limited (PSTCL), has filed the present petition under section 94(1)(f) of the Electricity Act, 2003 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908, and Regulation 64 of the Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005.

PSTCL had filed Petition No.65 of 2017 for Annual Performance Review (APR) FY 2017-18 and Determination of ARR for FY 2018-19. In the said petition, PSTCL had claimed Net Revenue Requirement (NRR) of ₹1403.72 crore for FY 2017-18 and ₹1487.99 crore for FY 2018-19. Thereafter, PSTCL separately filed Petition (No.04 of 2018) for True-Up of FY 2016-17 on 09.02.2018 along with Audited Annual Accounts of FY 2016-17.

The Commission disposed the aforesaid Petitions (for True-Up of FY 2016-17, APR of FY 2017-18 and ARR for FY 2018-19) vide Tariff Order dated 19.04.2018. Against the said Order (dated 19.04.2018), PSTCL has filed the instant review petition dated 07.06.2018, wherein the Petitioner has sought review on certain issues relating to FY 2016-17.

After hearing the officers of PSTCL, the Petition was admitted vide Order dated 02.08.2018. Regarding the issue of “Adjustment of Revenue Gap” brought out in para no.17 to 20 of the petition, the Commission desired the same be discussed/reconciled by both PSTCL and PSPCL with the officers of the Commission. In compliance of aforesaid order (dated 02.08.2018) of the Commission, PSTCL filed its additional submission vide memo no.2114/APR-Review dated 24.08.2018 and a joint meeting was held (between officers of Commission, PSPCL & PSTCL) at Commission’s office on

09.08.2018 to discuss the issue of “Adjustment of Revenue Gap”.

The matter was again taken up for hearing on 05.09.2018 wherein, the Petitioner was heard and the matter was reserved vide Order dated 11.09.2018. PSTCL vide its memo no.2183 dated 04.09.2018 filed another additional submission, however, details of assets mentioned in the said lately filed additional submission are incomplete and it was submitted that remaining information shall be submitted shortly. PSTCL has not submitted the complete information and in lieu of the same, the Commission is hereby passing the order on the basis of the information and documents available on record.

Additionally, vide memo no. 2262 dated 14.09.2018, PSTCL in reference to the issue of adjustment of revenue requirement, has requested the Commission to clarify the revenue requirement for FY 2017-18 including impact of previous years True-up. In reply thereof, the Commission has provided the requisite clarification vide memo no. PSERC/1458 dated 21.09.2018, stating that the Commission in its earlier Order(s) had already clarified the revenue requirement duly approved by the Commission in the Review of any given year should be recognized as revenue in the Annual Accounts.

The appropriate provision pertaining to review of an Order passed by the Commission is provided under Regulation 64 of The Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005. The same is reproduced as under:

“*64. Review of the decisions, directions and orders:*

(1) Any person by a decision or order of the Commission, from which no appeal is preferred

or allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decision/order was passed by the Commission or on account of some mistake or error apparent on the face of record, or for any other sufficient reason, may apply for review of such order within 60 days of the date of decision/order of the Commission.

(2) An application for review shall be filed in the same manner as a petition under Chapter II of these Regulations.

(3) The application for review shall be accompanied by such fee as may be specified by Commission.

(4) When it appears to the Commission that there is no sufficient ground for review, the Commission shall reject such review application.

(5) When the Commission is of the opinion that application for review should be granted, it shall admit the same and direct to issue notice to the concerned party (ies).

(6) The review application / petition filed before the Commission shall be dealt with as expeditiously as possible and Endeavour shall be made to dispose of the Review finally within One Hundred twenty days (120 days) from the date of receipt of the Review in the Registry and 90 days from the date of admission of the review, whichever is later. In case of any delay in disposal of Review Petition, the reasons for the same shall be recorded.

(7) *No application for review shall be entertained unless it is supported by an affidavit as per Regulation 10.*

(8) *The quorum for the meeting of the Commission to review any previous decision taken by the Commission shall be Chairperson and all Members.*

(9) *When an application for review of any judgment or order has been made and disposed of, no further application for review shall be entertained in the same matter."*

The issues raised by the Petitioner (related to FY 2016-17) in the present review petition and decision of the Commission is discussed in the ensuing paragraphs.

1. Employee Cost:

Submission of the Review Petitioner:

The Petitioner has submitted that the Commission has disallowed the Terminal Benefits of ₹4.57 crore as a part of the employee cost on the ground that provision for solatium, gratuity and leave encashment is not allowable as per Regulations 33 of PSERC Tariff Regulations, 2005. PSTCL is obligated under law to meet the terminal benefit liabilities of the employees both those who were transferred to PSTCL in reorganization of the Punjab State Electricity Board and the personnel recruited after the reorganization, which are covered under the New Pension Scheme (NPS).

The contribution to terminal benefits of employees being a statutory mandate, should be allowed to PSTCL for the entire cost of such funding, both with regard to the contribution related to the current year but also the funding of the unfunded liability based on actuarial valuation. It is therefore submitted that the Commission may review the decision regarding the unfunded liabilities and provide for the funding of such liabilities progressively instead of following the principle of “pay as you go”. The liability for gratuity and leave encashment is required to be allowed as claimed by PSTCL on the basis of actuarial valuation which is in compliance with INDAS-19 issued by the Institute of Charted Accountants of India.

The Commission has allowed the other employee cost expenses on normative basis. The Commission allowed ₹116.73 crore as other employee cost against the actual cost of ₹172.47 crore leaving a difference of ₹55.74 crore. The disallowance of ₹55.74 crore is actually paid to the employees and cannot be denied.

Further, PSTCL in its additional submission dated 27.08.2018, reiterated its submission that the Commission has allowed the other employee cost for FY 2016-17 at ₹116.73 crore on normative basis for transmission business whereas the actual cost for the year is ₹172.47 crore, leaving a difference of ₹55.74 crore to be met through internal sources/borrowings, as despite the disallowance, the same has actually been expended. The Commission did not approve the cost on account of new additions in the true-up. PSTCL being a State Utility is bound to pay its employees the increase on account of DA, other allowances, time bound scales etc. on the pattern of State Govt. and has a little or no control over such expenses. Accordingly, actual other employee cost of ₹178.89 should be allowed.

Commission's Analysis:

With respect to PSTCL's submission on the issue of terminal benefits, it is pertinent to mention that PSTCL's share @11.36% of terminal benefits of ₹254.31 crore (as depicted in the Audited Financials of FY 2016-17) has fully been allowed to the utility. Further, ₹4.04 crore on account contribution paid towards NPS, CPF, PF, LWF, Miscellaneous P.F. inspection fees etc. is also allowed.

PSTCL has submitted that the Commission should review its decision of disallowing ₹4.57 crore relating to terminal benefits. The said amount of ₹4.57 crore relates to provision for Solatium, Gratuity and Leave Encashment which is not allowable as per Regulation 33 of PSERC Tariff Regulations, 2005, which states that with regard to unfunded past liabilities of pension and gratuity, the same should be allowed on the principle of 'pay as you go'. The relevant extract from Commission's Order dated 19.04.2018 in this regard, is reproduced below:

> *"The terminal benefits are required to be apportioned and allowed in the ratio of 88.64% and 11.36% between PSPCL and PSTCL respectively as per Transfer Scheme. PSTCL has claimed Terminal benefits of ₹262.80 crore for Transmission Business and ₹0.12 crore for SLDC Business. An amount of ₹4.57 crore of 'other terminal benefits' relating to provision for Solatium, Gratuity and Leave Encashment in respect of employees recruited by company and ₹4.04 crore for contribution paid for employee towards NPS, CPF, PF, LWF, Miscellaneous-*

P.F. inspection fees, Solatium, Momento etc. has been depicted in the total amount of terminal benefits of ₹262.92 crore in the Audited Annual Accounts. Provisions for Solatium, Gratuity and Leave Encashment is not allowable as per Regulation 33 of PSERC Tariff Regulations, 2005, which states that with regard to unfunded past liabilities of pension and gratuity, the Commission will follow the principle of 'pay as you go'.

PSTCL's share @11.36% of terminal benefits has been depicted as ₹254.31 (₹254.19 for Transmission Business+₹0.12 for SLDC Business) crore in the Audited Annual Accounts for PSTCL and same is allowed. In addition to the above, ₹4.04 crore for contribution paid for employee towards NPS, CPF, PF, LWF, Miscellaneous P.F. inspection fees, Solatium, Memento etc is also allowed for FY 2016-17."

On the issue of 'Other Employee Cost', the same is approved in accordance with Regulation 28 and cannot be allowed on actual basis as claimed by the Petitioner. As per 28(3)(ii) Regulations, increase in 'other employee cost' is to be limited to average Wholesale Price Index (WPI) and Consumer Price Index on the base 'other employee cost' approved for FY 2011-12

These submissions were also raised by PSTCL in its original petition and have already been considered. There is no new fact or evidence raised by the Petitioner on this issue, thus, the same cannot be reviewed.

2. Interest charges:

Submission of the Review Petitioner:

PSTCL has submitted that the Commission has not considered loan of ₹50 crore taken from the Bank of India on the ground that loan was a short term borrowing and not a long term loan. The amount of ₹50 crore borrowing was utilized as a capital expenditure to create a capital asset and therefore, is required to be serviced in the tariff as servicing of the capital asset. It is further submitted that once a capital asset has been created out of the debt, there is no reason to exclude such capital asset contribution for servicing in the tariff on grounds whether it is a short term borrowing or medium term borrowing or a long term borrowing. Accordingly, the Commission should consider the amount of loan for the financial year 2016-17 as ₹396.96 crore and not ₹346.96 crore.

Further, PSTCL in its additional submission dated 27.08.2018, submitted that it sought a long term loan of ₹250 crore sanctioned from Bank of India in December 2015, to be utilized for various purposes including funding of the margin money for capital expenditure. This ₹250 crore loan was a part of funds requirement of ₹500 crore for FY 2015-16 and 2 months of FY 2016-17. The tariff proposed for FY 2015-16 fell short of cash requirement of the corporation by about ₹500 crore. It is therefore, prayed that the same may be considered and approved as part of long term loan utilized for construction.

Commission's Analysis:

The submission of PSTCL is not tenable as loans taken for short term / working capital requirements cannot be utilized for funding capital expenditure and diversion of funds cannot be approved. It is imperative on the part of the utility that loans / debt has to be utilised only for the purpose for which the same is sanctioned by the financial institution and diversion of funds should not be made.

Further, on the issue of seeking loans to fund the variance in actual expenses incurred by PSTCL against expenses approved by the Commission, the same cannot be approved. In case such loans are approved, the amount initially determined / approved by the Commission for a given year will have no relevance, as the gap will always be funded by the utility through such loans.

Thus, there is no new fact or evidence raised by the Petitioner with respect to this issue.

3. Adjustment of Revenue Gap:

Submission of the Review Petitioner:

It is submitted that there has been a difference in the accounting of the amounts including the revenue gap between the Review Petitioner and PSPCL, related to the financial years 2014-15, 2015-16 and 2016-17. An amount of ₹120.82 crore is due and outstanding from PSPCL to the Review Petitioner.

Further, vide its additional submission dated 27.08.2018, PSTCL has submitted that during the review of FY 2016-17, revenue from Tariff was considered as ₹1074.87 crore instead of ₹967.62 crore. This result in understatement of gap by ₹107.25 crore.

Commission's Analysis:

PSTCL has submitted that in the Order dated 23.10.2017 (first MYT Order from FY 2017-18 to FY 2019-20), the recoverable amount worked out in Review of FY 2016-17 be clarified. During the hearing for the instant Petition on 05.09.2018, the officers of PSTCL had agreed in principle that there is no dispute in the transmission charges determined and paid (by PSPCL) from FY 2014-15 to FY 2016-17.

The review petition under consideration has been filed by PSTCL against Order 19.04.2018 and the clarification so sought relates to Order dated 23.10.2017, accordingly, the issue cannot be considered under the instant review petition.

4. Depreciation:

Submission of the Review Petitioner:

PSTCL has submitted that the Commission has determined the addition of capital assets of ₹324.46 crore for transmission business and ₹2.56 crore for SLDC business while the actual addition of capital assets as per financial accounts of FY 2016-17 are ₹496.56 crore for transmission business and ₹3.88 crore for SLDC business. The rejection of the entire historical cost of the past period on the ground of non-availability of details is incorrect and is an error apparent on the fact of the record.

Further, vide its additional submission dated 27.08.2018, PSTCL submitted as under:

"The data desired by Commission is being compiled by the utility. After analysis of the same viz-a-viz requirement of the Commission, the same shall be submitted positively before the next date of hearing".

PSTCL vide its memo no.2183 dated 04.09.2018 (filed with the Commission on 05.09.2018) filed another additional submission, however, asset details provided were again incomplete and it was submitted that remaining information shall be submitted shortly.

Commission's Analysis:

While examining PSTCL's petition for true-up of FY 2016-17, the Commission vide its letter No.1746 dated 29.12.2017 had called for specific information relating to the assets capitalized during FY 2016-17. In reply, PSTCL vide letter no. 282/FA/Comml.-23/Vol-V dated 29.01.2018 had submitted details of assets addition of ₹500.44 crore during FY 2016-17. On a perusal of the said details submitted by PSTCL, it was observed that PSTCL has also capitalized the assets pertaining to previous years during FY 2016-17.

Accordingly, the Commission vide its letter no. 2421/PSERC/Dir./M&F dated 07.03.2018 had called for the reasons from PSTCL for not capitalizing the assets pertaining to previous years during the respective year of its commissioning. In its reply, PSTCL vide its Memo No.698 dated 09.03.2018 intimated that the requisite information shall be supplied as soon as it is available. No details in this regard were furnished by PSTCL, accordingly, based on the information provided by PSTCL vide its letter No. 282/FA/Comml.- 23/Vol-V dated 29.01.2018, addition of capital assets of ₹324.46 crore were determined for Transmission Business and ₹2.56 crore for SLDC Business in Order dated 19.04.2018.

As mentioned above, the Petitioner was given adequate time period to provide details with regard to assets for FY 2016-17, however the same were not provided to the Commission. This fact has also been recorded in Commission's Order dated 19.04.2018. The relevant extract from the order is reproduced as under:

> *"PSTCL has an addition of assets worth ₹496.56 crore and ₹3.88 crore for Transmission and SLDC Business respectively. The average percentage rate of R&M expenses of ₹46.07 crore for assets of ₹8385.09 crore works out to 0.55%(46.07/8385.09).PSERC vide its letter No. 1746 dated 29.12.2017 has called for the information relating to the assets capitalized during FY 2016-17. PSTCL vide letter no. 282/FA/Comml.-23/Vol-V dated 29.01.2018 has supplied details of assets addition of ₹500.44 crore during FY 2016-17. It has been observed that PSTCL has also capitalized the assets pertaining to previous years during FY 2016-17. PSERC vide its letter no.2421/PSERC/Dir./M&F dated 07.03.2018 has called for the reasons for not capitalizing the assets pertaining to previous years during the respective year of its commissioning. PSTCL vide its Memo No. 698 dated 09.03.2018 has intimated that the requisite information shall be supplied as soon as it is available. However, based on the information provided by PSTCL vide its letter No.*

282/FA/Comml.- 23/Vol-V dated 29.01.2018, the Commission determines addition of capital assets of ₹324.46 crore for Transmission Business and ₹2.56 crore for SLDC Business for FY 2016-17 as per Regulation 28(6) of the PSERC Tariff Regulations, 2005 on pro-rata basis.”

In view of the above, it is amply clear that there is no new fact or evidence raised by the Petitioner on this issue.

The scope of an application for review is restricted and the Commission can review its Order on discovery of new or important matters or evidence or if it is shown that Order sought to be reviewed suffer from some mistake/error apparent on face of record or other reasons which in the opinion of the Commission is sufficient for reviewing the earlier Order/decision. It is not the case of the petitioner that he has discovered any new and important matter which after the exercise of due diligence was not within his knowledge or could not be brought to the notice of the Commission. There is no mistake or error apparent on the face of the record which warrants review of the earlier Order. The review petition is devoid of merit, hence the same is dismissed.

The Review Petition is disposed of accordingly.

-Sd/-	-Sd/-	-Sd/-
(Anjuli Chandra) **Member**	**(S.S. Sarna)** **Member**	**(Kusumjit Sidhu)** **Chairperson**

Place: Chandigarh
Date: 11.10.2018